



VIA U.S. MAIL AND E-MAIL

May 18, 2018

Anna Maria Farias
Assistant Secretary for Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
451 7th Street S.W.
Washington, DC 20410
Evonne.G.Heredia@hud.gov

Re: Assistance Animal Guidance

Dear Assistant Secretary Farias,

We enjoyed speaking to you, Tim Petty, and Lisa Grosso last week. Thank you for the opportunity to share some of Access Living's concerns regarding the forthcoming assistance animal guidance.

General Concern Regarding Assistance Animal Guidance

Before we address our particular concerns regarding future guidance, there are a few overarching issues we should address. As a preliminary matter, we worry that any updated or new guidance on assistance animals may unintentionally complicate or compromise reasonable accommodation requests unrelated to assistance animals. Hence, any guidance on this issue should, in our view, be carefully tailored to avoid conflicts with other reasonable accommodation guidance.

Similarly, it is important that any new guidance not apply to residents whose assistance animals have already been approved by their housing providers. To avoid placing such residents in a precarious position, new guidance should make clear that it is prospective, and that housing providers should not re-evaluate assistance animals that have already been approved as reasonable accommodations.

Specific Concerns Regarding Assistance Animal Guidance

Below we have summarized the specific issues we raised last week during our phone call.

1. Verification

Current guidance requires the verification of "[a] doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability."¹ We are concerned that future guidance may require verification by a doctor or medical provider. This would be too restrictive and particularly challenging for low-income people, who may have difficulty seeing a doctor to get reasonable

¹ *Joint Statement of the Department of Housing and Urban Development and the Department of Justice – Reasonable Accommodations Under the Fair Housing Act, Washington, D.C. (March 17, 2004), pp. 14 (Question 18), available at: <http://www.hud.gov/offices/fheo/library/huddojstatement.pdf>.*

accommodation letters. Moreover, other providers, such as social workers, case managers, counselors, rehab workers, and even dog trainers can provide reliable verification. For example, we had a case where a person who had trouble walking, navigating steps, and maintaining balance needed an assistance animal to help with her stability and movements. A dog was specifically trained to assist with these activities, which was verified in writing by the dog's trainer.

Simply put, verification can reliably be provided by individuals who are not in the medical field.

2. Cottage Industry Issue

In recent years, a cottage industry of websites has developed that, for a prescribed fee, provide a certificate, license, or similar document to “certify” an animal as an assistance animal.

The Fair Housing Act does not require assistance animals to be “certified” in this manner. As such, these purported certifications have little legal effect. Despite this, housing providers and people with disabilities sometimes assume these online certifications or online letters are a legitimate way to verify the need for the animal. Worse, people with disabilities sometimes wrongly assume they *must* secure a certificate for an assistance animal, and housing providers sometimes wrongly *require* a certificate in order to approve an assistance animal. The cottage industry stokes and relies upon this confusion to prey upon people with disabilities and housing providers alike.

In addition, some people who do not actually have a disability or a disability-related need for an animal wrongly secure an online certificate/letter to falsely claim a pet is actually an assistance animal.

It is important to find a solution to the cottage industry problem without increasing the burden on people with disabilities. For example, it is problematic to simply assert that all online verifications are *per se* invalid. With the improvements of technology and the popularity of e-medicine, it has become increasingly common for people to communicate with their medical provider over the internet, particularly in rural areas.

Thus, we propose that HUD develop factors housing providers can use to evaluate the reliability of a document that purports to verify the need for the assistance animal. The factors include:

1. the extent to which the documentation demonstrates the provider has personal knowledge of the person with a disability and the disability-related need for the assistance animal;
2. the extent to which the documentation describes the professional relationship between the provider and the person with a disability, including the length of this relationship; and
3. whether the documentation appears to be from a business (e.g. a website) whose sole purpose is to provide a certificate, license, letter, or similar statement that an animal is an assistance animal. (If so, the documentation may not be sufficient.)

If factors are developed, HUD could issue guidance to the effect that a purported verification letter must address each of the factors. Similarly, HUD could also note that if a verification letter does not adequately address those factors, the housing provider may ask the person with a disability to get more supporting documentation to address those factors.

3. Assistance Animal/Lease Violation Issues

Sometime a person with a disability who genuinely needs an assistance animal and lives in a no-pets building will get an animal without informing the housing provider. Typically, this occurs when the person with a disability (a) is unaware of his/her fair housing rights or (b) is aware of his/her rights but has a bad relationship with the housing provider.

In these situations, if the housing provider finds out about the assistance animal, it may threaten to evict the person with a disability, whereupon the person may make a requests to keep the assistance animal as a reasonable accommodation.

While this situation is not ideal, it is important for the guidance to make clear that the housing provider should not hold the lease violation against the tenant. Instead, the guidance should emphasize that the housing provider must evaluate a reasonable accommodation request after an alleged lease violation in the same manner as if there were no lease violation.

4. Exotic Animals

Housing providers often complain that people want to keep exotic animals as assistance animals. There have also been several recent articles about exotic animals on planes. Despite the notoriety of these examples, in our practice we cannot recall a request from a person with a disability seeking approval of an exotic animal as an assistance animal. Most, if not all, of our assistance animal cases have involved a dog or a cat.

However, we urge that any new guidance not proclaim a hard and fast prohibition against an exotic animal as an assistance animal. As with many issues is disability law, a one-size-fits-all solution is not appropriate. Although in Chicago it might be strange to have a rabbit or a ferret as an assistance animal, this might not be strange in a more rural area.

If presented with a request for an atypical assistance animal, the housing provider should still evaluate the reliability of the verifying documentation, but also consider the characteristics of the community (urban vs. rural) and the specific property (e.g. size of the unit) to determine whether the particular animal is reasonable.

5. Breed Restrictions

Housing providers also often wish to exclude certain breeds of dogs as assistance animals. Generally, a housing provider can deny an animal if that particular animal poses “a direct threat of harm to others, or would cause substantial physical damage to the property of others.”² This determination must be “based on an individualized assessment that relies on objective evidence about the specific animal’s actual conduct – not on mere speculation or fear about the types of harm or damage an animal may cause and not on evidence about harm or

² *Assistance Animal Guide* at 3.

damage that other animals have caused.”³ We believe this standard should remain in any new guidance.

6. Multiple Assistance Animals

Some people with disabilities might have more than one assistance animal. In our experience, as with exotic animals, this issue rarely comes up. Nonetheless, there may be situations where this kind of request is reasonable. For example, a veteran with PTSD may rely on two cats as emotional support animals and separation from them may greatly exacerbate her disability.

Housing providers should not reject requests for multiple assistance animals out of hand, but rather should evaluate them on a case-by-case basis, as with any other request for a reasonable accommodation.

7. Other Tenants with Allergies or Fear of Animals

Housing providers sometimes deny requests for assistance animals based on speculation that others in the building will be allergic to the animal or fear animals. In practice, we have never had a reasonable accommodation request defeated for this reason. The concern by the housing provider is typically raised as a hypothetical rather than due to an actual situation in the building.

In our view, an allergy or fear of animals should not be a factor in determining whether to grant an accommodation, unless the allergy or fear rises to the level of a direct threat (i.e. the presence of the animal poses a genuine risk to a resident in the building). Even in that case, the housing provider still has an obligation to evaluate whether there is a solution that works for the resident with a disability and the other resident. For example, the housing provider could place the person with the assistance animal and the person with a severe allergy at opposite ends of an apartment building, or on different floors, if doing so alleviates the risk to the person with allergies.

8. Demanding too much documentation regarding the need for the accommodation

Housing providers sometimes ask for too much information to verify a reasonable accommodation request. For example, when a person’s disability and the need for the accommodation are obvious, as with a blind person who uses a seeing-eye dog, a housing provider may still seek documentation of both the disability and the need for the accommodation.

New guidance should emphasize that when both a person’s disability and the need for an accommodation are apparent, the housing provider cannot ask for verifying documentation.

On the other hand, if neither the person’s disability nor the need for the accommodation are apparent or known, the housing provider can ask for documentation of both the person’s disability and need for the assistance animal.

If the person’s disability is apparent, but the need for the animal is not, the housing provider can ask for documentation regarding the person’s need for the assistance animal.⁴

³ *Id* (emphasis in original).

⁴ *Assistance Animals Guide* at 3.

However, in no circumstance may the housing provider request information about a person's particular diagnosis or medical records. For example, if documentation confirms that a person has a mental health disability, but does not identify the particular mental illness (e.g. clinical depression, bipolar disorder, or an anxiety disorder), such documentation is sufficient.

Unfortunately, too often housing providers ask for a diagnosis or medical records in order to determine whether to grant the accommodation. Thus, any new guidance should make clear that housing providers must limit their inquiry to what is allowed under the Fair Housing Act, and not ask for additional information.

Another point to emphasize in the guidance is that housing providers are obliged to protect the confidentiality of verification documents in order to protect the privacy of the resident with a disability. Although this should be axiomatic, we have seen many instances where a housing provider shares private information to others about a resident with a disability.

9. Annual Recertification

Some housing providers require annual verification of a person's disability and need for an assistance animal, even when the disability is permanent. This creates unnecessary barriers for people with disabilities to live in the community, and it can be hard and costly to get verifications every year.

In addition, the aforementioned cottage industry takes advantage of this practice. Even though online certifications/letters are not required, if the resident assumes otherwise, he/she will be forced to pay for a certificate year after year, which is an unfair burden, especially when the disability is permanent.

New guidance should make clear that annual recertifications are inappropriate when the person's disability, whether apparent or non-apparent, is permanent.

10. No Form Should Be Required

Housing providers sometimes require that a reasonable accommodation request be made on a standardized form. There is likely no harm in having a standard form, but the housing provider should not *require* a person with a disability to use a standard form. If a person with a disability gets a reliable supporting letter from a provider, the person should not then be required to go back to the provider to get a form filled-out. Doing so creates an unnecessary and silly barrier for a person with a disability to obtain approval for a needed accommodation.

Section 504 and Homelessness Issues

Although we did not have sufficient time to truly delve into these issues, we support the two letters from the National Council on Independent Living that encourage HUD to (1) increase the percentage of UFAS units required under Section 504, and (2) ensure accessibility in homeless shelters and Continuum of Care programs. Moving forward, we would love the opportunity to further discuss these issues with you. In the meantime, we appreciate your willingness to discuss the Section 504 issue with the Deputy Secretary.

Please let us know what other help we can provide as HUD develops new assistance animal guidance. In particular, and as discussed during our phone call, we would like an opportunity to review a draft of the guidance before it is released. As also related during our

phone call, we would be happy to pull together a small group of stakeholders from the disability rights community to discuss the pending guidance further, along with stakeholders in the housing industry. Incidentally, Access Living staff will be in Washington, D.C. for a conference June 10, 11, and 12, so should any of those dates be convenient for you to meet with stakeholders, they certainly work for us.

I look forward to hearing from you via email at mbristo@accessliving.org or by phone at (312) 640.2104. You are also welcome to contact Mary Rosenberg, Staff Attorney, at mrosenberg@accessliving.org or (312) 640-2155.

Sincerely,



Marca Bristo
President and CEO

cc: Tim Petty, Senior Counsel
Lynn Gross, Director of Enforcement
Kelly Buckland, Executive Director, NCIL